IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 6353 of 2006
Date of Decision: 30.1.2007

Karan Singh and others ...Petitioners

Versus

Khemsi Dass and others ....Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri N.S. Shekhawat, Advocate, for the petitioners.

HEMANT GUPTA, J.

The defendants are in revision aggrieved against the orders passed by the Courts below, whereby the defendants were restrained from interfering in the possession of the plaintiffs over the suit land.

One Sita Devi, daughter in-law of Khemsi Dass executed two different sale deeds selling the share of Khemsi Dass in the land in dispute, as his legal heir to the defendant-petitioners. Subsequently, the present suit has been filed by Khemsi Dass, challenging the sale executed by Sita Devi, alleging that the mutation of inheritance sanctioned on the presumption of his death is illegal, void and ineffective qua the rights of the plaintiffs.

Both the Courts have found that the petitioners have purchased the share of the suit land and not a specific portion of the same and, therefore, they cannot be deemed to be in possession of specific portion. It has been also found that the mutation has been got sanctioned

after concealment of true and material facts and such transaction is a fraudulent act and does not confer any right, title or interest in favour of any person.

Learned counsel for the petitioners has vehemently argued that the sale in favour of the present petitioners is protected in terms of Section 41 of the Transfer of Property Act, 1882. However, the said defence is to be taken into consideration at the time of the final decision of the suit and not at the stage of granting an injunction, as prima-facie, the sale has been found to be an act of fraud.

Keeping in view the fact that the sale has been effected in favour of the petitioners on the presumption of death of plaintiff No.1, therefore, the orders passed by the Courts below, cannot be said to be suffering from any patent illegality or irregularity, which may warrant interference by this Court, in exercise of its revisional jurisdiction.

Hence, the present revision petition is dismissed.

30-1-2007 (HEMANT GUPTA)
ds JUDGE